

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Applications of)	MM DOCKET NO. 93-107
)	
DAVID A. RINGER)	File No. BPH-911230MA
)	
ASF BROADCASTING CORPORATION)	File No. BPH-911230MB
)	
WILBURN INDUSTRIES, INC.)	File No. BPH-911230MC
)	
SHELLEE F. DAVIS)	File No. BPH-911231MA
)	
OHIO RADIO ASSOCIATES, INC.)	File No. BPH-911231MC
)	
For a Construction Permit for)	
a New FM Station on Channel)	DOCKET FILE COPY ORIGINAL
280A at Westerville, Ohio)	

To: The Review Board

OPPOSITION TO MOTION FOR LEAVE TO FILE COMMENTS

David A. Ringer ("Ringer"), by and through counsel, and pursuant to §1.294 of the Commission's Rules (47 C.F.R. §1.294, hereby submits an opposition to the "Motion For Leave To File Comments" ("Motion") filed by Ohio Radio Associates, Inc. ("ORA"), in the above-captioned proceeding. In support whereof, the following is shown:

Background

1. On May 9, 1994, Mr. Ringer filed an amendment to specify a new tower site. In the engineering portion of the amendment, Mr. Ringer's consulting engineer noted that "the facilities proposed herein would be short spaced (sic) to two other stations: WTTF-FM, Tiffin, OH, Channel 279B (and) WPAY-FM, Portsmouth, OH,

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Channel 281C." See "Petition For Leave To Amend and Amendment" at Exhibit 2.

The engineer stated further: "These short spacings are permitted under Section 73.215 of the FCC Rules, provided that the necessary contour protection is provided to these short spaced stations." A full contour protection showing was included with the engineering portion of the amendment. This showing demonstrated that "the proposed operating facilities provide the required contour protection to WPAY-FM....."

2. On May 18, 1994, the Mass Media Bureau filed its Comments on Mr. Ringer's tower relocation amendment. The Bureau specifically found that: "[T]he engineering staff of the Bureau has reviewed Ringer's technical proposal and has determined that it is in compliance with the Commission's Rules." See "Mass Media Bureau's Comments on Petition For Leave To Amend and Amendment," at p. 2.

THE SHORT-SPACING ISSUE HAS BEEN RESOLVED

3. In its Motion, ORA attempts to raise an argument that has been rejected on numerous occasions. In a Petition To Deny filed earlier against some of the applicants in this proceeding (including Mr. Ringer), ORA made the very same arguments that are contained in its instant filing; namely, that some of the Westerville proposals were short-spaced to WTTF-FM, Tiffin, Ohio, in violation of the Commission's spacing rules. The Audio Services Division ("ASD") reviewed ORA's arguments and rejected them in the Hearing Designation Order, 8 FCC Rcd 2651, 2651-2, (ASD 1993)("HDO"). Nevertheless, ORA filed with the Presiding Judge a "Motion To Certify Questions to the Commission" which was essentially an unauthorized attempt to appeal the Bureau's decision. This Motion was properly rejected by the Presiding

Judge. See, Memorandum Opinion and Order, FCC 93M-224, released May 4, 1994. Despite another rejection, ORA decided to raise this issue a third time by filing Motions To Enlarge Issues against each of the applicants in question, copying the exact same arguments it had raised in its Petitions To Deny and its Motion To Certify. The Mass Media Bureau opposed ORA's Motions To Enlarge Issues. In its Oppositions, the Bureau very bluntly stated that "ORA is wrong." See, e.g., "Mass Media Bureau's Opposition To Motion To Enlarge Issues Against Ringer," filed June 2, 1993. Finding that ORA's Motions were nothing more than attempts to seek reconsideration of the Hearing Designation Order, the Presiding Judge later denied each of them. See, e.g., Memorandum Opinion and Order, FCC 93M-366, released June 16, 1993. ORA raised these arguments one last time, in the Exceptions it filed to the Initial Decision in this proceeding.

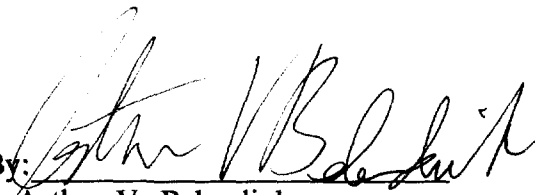
4. Despite the fact that both the Bureau and Presiding Judge have thoroughly reviewed the arguments raised by ORA in this proceeding and have flatly rejected them, ORA is once again trying to raise them through its late-filed Motion. The case cited in ORA's Motion - The Livingston Radio Company, FCC 94-320, released January 12, 1995, does nothing to change the basic facts in this case - that Mr. Ringer was permitted to rely on §73.215 of the rules when selecting a replacement tower site. ORA admits that the applicant in the Livingston case did not attempt to rely on §73.215 of the rules when filing its application. That fact alone sets the Livingston case apart from the facts in this case.

5. The question of whether applicants in this proceeding were permitted to

have their applications processed pursuant to Section 73.215 to avoid potential short-spacings to other stations has been fully litigated and was resolved months ago. The Mass Media Bureau has consistently supported the various short-spaced proposals in this proceeding and has found them in compliance with all of the technical standards. ORA's Motion is yet another abusive attempt to raise an argument that has been repeatedly rejected. Its Motion should be similarly rejected out of hand.

Respectfully submitted,

DAVID A. RINGER

By: 
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February 15, 1995

CERTIFICATE OF SERVICE

I, K. Dale Harris, a legal assistant in the law firm of Smithwick & Belendiuk, P.C., certify that on this 15th day of February, 1995, copies of the foregoing were mailed via first class mail, postage pre-paid, to the following:

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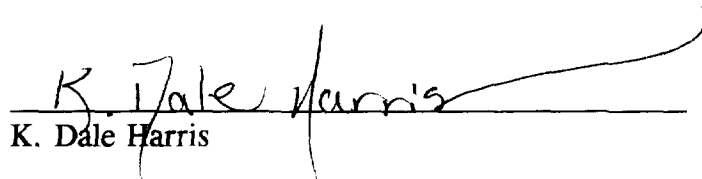
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